IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5391 OF 2004

Adityavikram Shishir Gandhi .. Petitioner.
Vs.
Yunnu Haji Jainoddin
Shaikh & Anr. .. Respondents.

Mr.Vineet Naik for the petitioner.
Mr.A.N.Maniyar for respondent nos.1 and 2.

CORAM : D.B.BHOSALE, J.
DATED : 11TH OCTOBER, 2006

P.C.:

. Heard learned counsel for the petitioner and respondent nos.1 and 2.

2. Rule, returnable forthwith. By consent of the parties taken up for final hearing. Mr.Maniyar, learned counsel waives service for respondent nos.1 and 2.

3. By this writ petition the petitioner has impugned the order dated 18.9.1991 passed on the two applications at Exhibit-24 and 37 filed by respondent no.2. Respondent No.2 had filed the application at Exhibit-24, under Order 21 Rule 97 of the Code of Civil Procedure, stating that neither the obstructionist nor his other brothers and sisters were made party after the death of their father Haji Jainoddin Shaikh during pendency of R.C.S.No.170 of 1978 and hence the decree is nullity and, therefore, the execution proceedings bearing regular Darkhast No.87 of 1979 deserves to be stayed pending disposal

of his application under Order 21 Rule 97. The application at Exhibit-37 was the separate application filed by respondent no.2 seeking stay of the regular Darkhast No.87 of 1979. Mr.Naik, the learned counsel for the petitioner, submitted that the court below has failed to follow the procedure contemplated by Order 21 Rule 97 and 101 of CPC and has proceeded to dispose of the application at Exhibit-24 with the application at Exhibit-37 for stay. Mr. Maniyar, the learned counsel for the respondent could not and did not dispute or controvert the submissions of Mr.Naik. In the circumstances the learned counsel for the parties have fairly stated that I need not record the reasons for setting aside the order passed on the application at Exhibit-24 and they have agreed for the following order:

. The writ petition is partly allowed. The impugned order passed on the application at Exhibit-24 is quashed and set aside. The executing court shall proceed with hearing of the application at Exhibit-24 in accordance with law and decide the same as expeditiously as possible and preferrably within a period of six months from the date of receipt of this order. The execution proceedings bearing Regular Darkhast No.87 of 1979 shall remain stayed till the disposal of the application at Exhibit-24.

. The writ petition is, accordingly, disposed of.

(D.B.Bhosale, J.)